

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DANIEL BOSH,)
)
Plaintiff,)
)
v.) **Case No. 11-CV-376-JHP**
)
CHEROKEE COUNTY BUILDING)
AUTHORITY, et al.,)
)
Defendants.)

**ORDER CERTIFYING QUESTIONS OF LAW TO THE SUPREME COURT OF
OKLAHOMA**

The United States District Court for the Eastern District of Oklahoma, pursuant to the Revised Uniform Certification of Questions of Law Act, OKLA. STAT. tit. 20, § 1601 et seq., hereby submits to the Supreme Court of the State of Oklahoma the following certified questions which may be determinative of an issue in the above-captioned matter now pending before this Court, but which does not appear to be answered by the controlling precedent of the Oklahoma Supreme Court.

I. Questions of Law to be Answered

1. Does Oklahoma law recognize a private right of action for excessive force under Oklahoma Constitution Article 2, § 30, as discussed by the Oklahoma Court of Civil Appeals in *Bryson v. Oklahoma County ex rel. Oklahoma County Detention Center*, 2011 OK CIV APP 98, ¶¶28-31, 261 P.3d 627, 638-40?
2. If Oklahoma recognizes such a cause of action, is a right of action available for deprivations occurring before the Court of Civil Appeals' decision in *Bryson*?
3. If Oklahoma recognizes such a cause of action, are its standards of municipal liability

coterminous with a federal cause of action pursuant to 28 U.S.C. §1983, or does Oklahoma law provide wider protections? Specifically, does any actionable right under the Oklahoma Constitution Article 2, §30 impose municipal or entity liability under a theory of *respondeat superior*?

II. Factual Background

1. The events of this case arise from the events surrounding a May 17, 2011 videotaped assault on Plaintiff by Defendants Gordon Chronister, and T.J. Girdner at the Cherokee County Detention Center.

2. On June 30, 2011, The Oklahoma Court of Civil Appeals issued its decision in *Bryson v. Oklahoma County ex rel. Oklahoma County Detention Center*, 2011 OK CIV APP 98, ¶¶28-31, 261 P.3d 627, 638-40, in which it discussed at length plaintiff Bryson's cause of action pursuant to Oklahoma Constitution Article 2, §30, and ultimately held that summary judgment was inappropriate for Bryson's claim pursuant to the Oklahoma Constitution. *Id.* at ¶31, 639.

2. On September 29, 2011, Plaintiff filed his original Petition in Cherokee County District Court against Defendants Cherokee County Governmental Building Authority (Authority), Chronister, and Girdner in Case No. CJ-2011-245. Plaintiff sought relief from Defendant Authority under the Oklahoma Governmental Tort Claims Act and from Defendants Chronister and Girdner for deprivation of rights pursuant to 28 U.S.C. §1983.

3. On October 24, 2011, Defendant Authority removed this case to the United States District Court for the Eastern District of Oklahoma where it was given Case No. 11-376-JHP. On October 31, 2011, Defendant Authority moved to dismiss all of Plaintiff's claims against it pursuant to Federal Rule of Civil Procedure 12(b)(6).

4. The Court, by Opinion and Order dated April 5, 2012, dismissed all pending claims

against Defendant Authority, but permitted Plaintiff to file an amended complaint to include claims against Defendant Authority under 28 U.S.C. §1983 and the Oklahoma Constitution. The Court specifically found that, based on the case law presented, it could not conclude that amendment to include a claim under the Oklahoma Constitution would be futile.

5. On April 20, Plaintiff filed his First Amended Complaint to include claims under §1983 and Oklahoma Constitution Article 2, §30 against Defendant Authority. Defendant Authority filed a Motion to Dismiss the Amended Complaint on May 4, 2012.

III. Statement Regarding Power to Reformulate Questions

In accordance with OKLA. STAT. tit. 20, §1604(A)(3) this Court acknowledges that the Oklahoma Supreme Court may reformulate the certified questions.

IV. Names and Addresses of Counsel of Record

In accordance with OKLA. STAT.. tit. 20, §1604(A)(4), the names and addresses of the counsel of record in this case are:

D. Mitchell Garrett , Jr.
Garrett Law Center, PLLC
PO Box 1349
Tulsa, OK 74101-1349
918-895-7216
Fax: 918-895-7217
Email: mitchell@garrettlawcenter.com
Attorney for Plaintiff

Chris J. Collins
Collins, Zorn, & Wagner
429 NE 50th St
Second Flr
Oklahoma City, OK 73105-1815
405-524-2070
Fax: 405-524-2078
Email: czwg@czwglaw.com
Attorney for Defendant Authority

J. Spencer Bryan
Bryan Terrill, PLLC
401 S Boston
Ste 2201
Tulsa, OK 74103
918-935-2777
Fax: 918-935-2778
Email: jsbryan@bryanterrill.com
Attorney for Plaintiff

Steven J. Terrill
Bryan Terrill, PLLC
401 S Boston
Ste 2201
Tulsa, OK 74103
918-494-5905
Fax: 918-494-2847
Email: sjterrill@bryanterrill.com
Attorney for Plaintiff

Stephen L. Geries
Collins, Zorn, & Wagner
429 NE 50th St
Second Flr
Oklahoma City, OK 73105-1815
405-524-2070
Fax: 405-524-2078
Email: czwg@czwglaw.com
Attorney for Defendant Authority

Randall J. Wood
Pierce, Couch, Hendrickson, Baysinger, &
Green (OKC)
PO Box 26350
Oklahoma City, OK 73126-0350
405-235-1611
Fax: 405-235-2904
Email: rwood@piercecouch.com
**Attorney for Defendants Chronister and
Girdner**

Robert S. Lafferrandre
Pierce, Couch, Hendrickson, Baysinger, &
Green (OKC)
PO Box 26350
Oklahoma City, OK 73126-0350
405-235-1611
Fax: 405-235-2904
Email: rlafferrandre@piercecouch.com
**Attorney for Defendants Chronister and
Girdner**

DATED this 30th day of August, 2012.



James H. Payne
United States District Judge
Eastern District of Oklahoma